

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

**KOLBY DUCKETT, DAVID SCHILLING,
and DAVID HOLLOWAY,**

Plaintiffs,

v.

No. 1:19-cv-00295

**CHIEF BRIAN HICKMAN, TED ROGERS,
and THE CITY OF COLLEGEDALE,
TENNESSEE,**

Defendants.

**JOINT SUPPLEMENTATION TO BRIEFING ON PLAINTIFF'S MOTION TO
COMPEL AND DEFENDANTS' RESPONSES THERETO (DOCS. 74-76)**

The parties hereby appear, by and through counsel, and file this Joint Supplementation to their briefing submitted on the Plaintiff's Motion to Compel. (Doc. 74). Pursuant to this Court's instructions at the hearing conducted on February 10, 2021, the parties identify the below portion of the e-mail communications between City of Collegedale Commissioner Ethan White, City of Collegedale City Attorney Sam Elliott, and City of Collegedale City Manager Ted Rogers on January 8, 2019. The below portion of the e-mail was shared as a part of text message communications between Plaintiff David Schilling, at that time a patrol officer for the Collegedale Police Department, and Commissioner Ethan White on January 8, 2019. The messages shown below are messages from Ethan White to David Schilling:

Sent - January 8, 2019 at 9:35 AM - (iMessage) - Delivered

What I am seeing in what you transmitted is the description of patrol activities and enforcement activities, along with the words "minimum requirements" for a "specified period" of a month. That clearly translates into "a predetermined or specified number" that is "within a specified period."

This policy or practice should be ceased immediately.

Sent - January 8, 2019 at 9:35 AM - (iMessage) - Delivered

That's what he sent me

Sent - January 8, 2019 at 9:35 AM - (iMessage) - Delivered

White 044

He highlighted the TCA code

Sent - January 8, 2019 at 9:35 AM - (iMessage) - Delivered

Above that section

The excerpted portion above is contained on CID-70 through 71, CID-73 through 77, CID-92, CID-131, CID-133, and CID-138 through 139, and appears a total of 8 times in the documents provided to the Court for *in camera* review. As demonstrated in the excerpt above, it also appears that while Commissioner White did not forward the portion of the e-mail that contained a quotation of the Tennessee Code, he referenced that Sam Elliott “highlighted the TCA Code” in his e-mail to Commissioner White. The remainder of the email communications provided to the Court for *in camera* review were not disseminated by Commissioner White, or by any other involved individual to the knowledge of the parties.

In participating in this Joint Supplementation, the Defendants do not waive any arguments that the excerpted portion of the e-mail communication forwarded by Commissioner White remains privileged and protected for all purposes moving forward in this litigation, including use for evidentiary or impeachment purposes during any deposition or trial. Further, the Defendants maintain their position that Commissioner White’s dissemination of a portion of the e-mail

communication with the City Attorney does not waive the privilege of City Manager Ted Rogers, Chief of Police Brian Hickman, or that of the City of Collegedale itself. All arguments as to the admissibility, discoverability, and the privileged nature of the above excerpted materials are expressly maintained.

RESPECTFULLY SUBMITTED this 16th day of February, 2021.

CHIEF BRIAN HICKMAN

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U. S. mail. Parties may access this filing through the Court's electronic filing system.

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Dated this 16th day of February, 2021.

By: /s/ Brian R. Bibb
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